that the order of the learned trial judge was a final order and that the plaintiffs' substantial objection must be dismissed.

Now as to the other three objections. The first and second of these three objections are really one objection. They refer to the form of the notice of appeal used by the defendants. The notice of appeal was not substantially in Form 1 as required by rule (6)(3) of the Federal Court (Civil Appeals) (Transitional) Rules 1963. The defendants had used the old form No. 19 made under O. 58 r. 1(3) of the Rules of the Supreme Court 1957, which had been revoked and replaced by the Federal Court (Civil Appeals) (Transitional) Rules. So far as I can see the only difference between the two forms is in the heading of the forms. The old form refers to O. 58 r. 1(3) and to the previous title of the Federal Court, whereas the new Form I refers to rule 6 of the Transitional Rules and to the Federal Court. In other respects the two forms are substantially the same. In my view, the failure to use the new form, which can be regarded as a mere irregularity did not render the proceedings void.

The last objection was the failure of the defendants to give their or their solicitor's address on the notice of appeal for the purpose of service but it so happened in this case the plaintiffs' solicitors were fully aware of the address of the solicitors for the defendants, because as Mr. Hawkins himself stated in his affidavit affirmed for the purpose of his application, that a copy of the notice of appeal was served by Shelley Yap Yeok Siew, the advocate for the appellants. He therefore knew the address of the solicitors for the defendants. In *Hoerler* v. *Hanover Chaoutchouc etc. Co.*,[5] the notice of the writ did not contain the address of the solicitor though it was given in the writ. It was held that the failure to put the address on the notice of the writ was a mere irregularity. I would therefore say also that the failure on the part of the defendants or their solicitors to put their address on the notice of appeal was a mere irregularity. I would give leave to the defendants to amend their notice of appeal to comply with the requirements of r. 6 of the Transitional Rules and to add the address of their solicitors on the notice. As to costs in the circumstances of the case I would order that the defendants shall have only half of the taxed costs.

Ismail Khan C.J. (Borneo): I have read the judgment of my brother Azmi with which I am in entire agreement.

Yong J.: I am also of the opinion that the proper test to be applied to determine whether an order made by a trial judge is or is not final was that laid down by Lord Alverstone C.J. in *Bozson* v. *Altrincham Urban District Council*[2].

In the instant case the order made by Lee Hun Hoe J. was clearly final as it had finally disposed of the rights of the parties as far as that court was concerned. The plaintiffs' contention that the order was interlocutory coming within the purview of the section 62(2) of the Courts of Judicature Act 1964 must therefore fail.

The plaintiffs in their motion also raised other minor points in that the defendants' notice of appeal had not quoted the correct form numbers and rules and had failed to give an address for service. It must be pointed out that the notes on the top of the form showing the numbers and rules are mere guide notes and do not strictly form part of the form. The plaintiffs have not complained that they had in any way been misled or had suffered damage thereby.

Failure to give an address in the notice of appeal could cause serious consequences on the question of service. Fortunately in this case the address of the defendants' solicitors is well known to the plaintiffs' solicitors as may be seen from the documents subsequently served by the plaintiffs' solicitors on the defendants' solicitors.

These alleged mistakes and omissions are mere irregularities, not affecting the merits of the case. I agree with the learned Lord President that leave be granted to the defendants to amend their notice of appeal under rule 22(1) of the Federal Court (Civil Appeals) (Transitional) Rules 1963 which reads: —

"The Court may at any time allow amendment of any Notice of Appeal, or notice of cross-appeal, or memorandum of appeal or other part of the record of appeal on such terms as it thinks fit."

The plaintiffs' motion is accordingly dismissed with costs. In view of the circumstances of this case I would allow the defendants only half of the taxed costs.

Motion dismissed.

SIMPSON v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) March 17, 1971]

[Malacca — Criminal Appeal No. 17 of 1970]

Women and Girls — Prostitution — Earnings — Living in part on — Habitual presence with or near prostitute in proximity of time and place — Presumption against accused — How rebutted — Women and Girls Protection Ordinance (S.S. Cap. 33), s. 6(1) and (3).

This was an appeal against conviction under section 6(1) of the Women and Girls Protection Ordinance. The appellant was charged with the offence of knowingly living in part on the earnings from prostitution of one Lai Pin Man. The facts are set out at length in the judgment.

The evidence revealed that the accused was always found together with or near the girl in proximity of time and place on all the occasions of prostitution by the girl. The learned magistrate convicted the accused on the grounds that he had failed to rebut the presumption arising under section 6(3) of the Ordinance which provides: "Where a male person is proved to live with or to be habitually in the company of a prostitute, or where any person is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, he shall, in the absence of proof to the contrary, be deemed to be knowingly living on the earnings of prostitution."

Held, dismissing the appeal: (1) if a man knowingly assists a prostitute with the direct object of enabling her to

carry on her trade and knowingly lives wholly or in part on the earnings of the prostitution which he assists, he is guilty of an offence under section 6(1) of the Ordinance;

(2) under section 6(3) of the Ordinance, the onus on the accused was no more than to "prove the contrary" merely by a preponderance of probability of the truth of what he deposed. This he failed to do;

(3) in this case there was ample corroborative evidence to support the conviction.

Cases referred to:-

(1) *R.* v. *Lee Whoy Kwoi* [1937] M.L.J. 240.

(2) *R.* v. *Pickford* (1914) 10 Cr. App. R. 269, 271.

(3) *R.* v. *King* (1914) 10 Cr. App. R. 117.

(4) *Calvert* v. *Mayes*, [1954] 1 Q.B. 342 at p. 348.

(5) *R.* v. *Thomas* [1957] 2 All E.R. 181.

(6) *Shaw* v. *Director of Public Prosecutions* [1962] A.C. 220 at p. 269-271.

(7) *R.* v. *Hill* [1914] 2 K.B. 386 at p. 389.

MAGISTRATE'S CRIMINAL APPEAL.

P. Devadas for the appellant.

Ahmad bin Haji Abdul (Deputy Public Prosecutor) for the respondent.

Sharma J.: The appellant is a junior technician with the Public Works Department, Malacca. He joined Government service in 1964 at the age of 22. He was convicted by the learned magistrate for knowingly living in part on the earnings of one Lai Pin Man (f) under section 6 (1) of the Women and Girls Protection Ordinance (Cap. 33) of the Straits Settlements. He was charged for having committed the offence on one specified date, namely November 19th. 1969 at the time and place specified in the charge.

The facts briefly are that the accused and Lai Pin Man (f) (hereinafter referred to as "the girl") met for the first time in 1966. She was then 21 and unmarried. He was already married but he started to play the role of a paramour to her. She set her affections on him and began to cling to him. She began to believe that he was going to marry her. They continued to have sexual intercourse. She says that the accused suggested to her that she should follow the example of those girls in Kuala Lumpur who though employed as clerks were successfully able to supplement their salaries with earnings brought into their purses by practice of prostitution. It is not necessary to go into the reasons why or how she became willing to let out her body to those who sought pleasure from its flesh. Whether she was available only to those who came to her through arrangements made by the accused or whether she was willing to offer her body to all who chose to visit her is again immaterial. The case has to be decided on the basis that at all relevant times she was to the knowledge of the accused a prostitute. The accused took her to Westernhay Hotel for the first time on October 4th, 1966 and it was there that he for the first time also had sexual intercourse with her. This state of affairs continued but we are not concerned with events prior to September 1969 when alone according to the girl herself she seems to have entered the world of whoredom, on September 20th, 1969 the accused took her to Westernhay Hotel and introduced her to one Han Don Kee (P.W. 4), who was then running the said hotel. A room was booked and the girl had sexual intercourse with three persons that evening. According to P.W. 4 the accused had asked him to introduce his (P.W. 4's) friends to the girl and he continued to do so. Between September 20th, 1969 and November 19th, 1969 the girl was prostituting herself at various places and towns and with various persons. It is not necessary to narrate those events except to mention that those who seem to have had a round of voluptious pleasure with her include names of personalities from various respectable walks of life. Some of them have very bravely and at the inevitable risk of exposing their own private lives appeared as witnesses for the prosecution. They at least had the virtue of courage and truthfulness. Some of the facts which emerge from that evidence and which are pertinent to the charge are: —

(a) that whenever and wherever the girl had sexual intercourse with these witnesses the accused was seen with her either *before* she went into the room for the purpose or at the very time that she proceeded to the room to meet a client for prostitution or *soon after* the sexual intercourse with the customer was over;

(b) that it was either the accused who took her (or as the accused prefers to say escorted her) to the places where prostitution took place or, if he did not accompany her to such places, he, according to the girl, instructed her to go there. The accused, however, denies this but the fact remains that he ultimately did follow her and make an appearance at those places and was found with the girl;

(c) that it was the accused who paid the room rent;

(d) that it was the accused who requested P.W. 4 to introduce men to the girl and that P.W. 4 never introduced any man to her unless the accused was around. P.W. 4 was not challenged about it and the only suggestion made to him was that he and the accused were working hand in glove.

It is best now to come to the events of November 19th, 1969 as the charge against the accused relates to that date alone. The girl made a report (Exhibit P 2) at the Central Police Station, Malacca. The accused had asked her to go to Westernhay Hotel that evening. This is what the girl says and there is no suggestion in the entire evidence that it was not so. The accused was already at the hotel when she arrived there. She went into one of the hotel rooms where she entertained P.W. 5 who, according to her, only fiddled and fondled with her private parts. He paid her $25 and left the room. P.W. 6 then went in. There was a raid by the police soon after and there in the toilet of the room was P.W. 6 with only a towel that covered the nakedness of his body. The girl was also in the room. They were asked to come into the hall of the hotel. The girl says that in the hall she took out the $25 she had got from P.W. 5 and gave them to the accused. She had already noted down the numbers on the currency notes which P.W. 5 had given her. The accused was searched and a sum of $25.10 was found on his person and the numbers on the currency notes recovered from him tallied with the numbers taken down by the girl.

Section 6(1) of the Women and Girls Protection Ordinance (Straits Settlements Cap. 33) reads as follows: —

"6(1). Every person who knowingly lives wholly or in part on the earnings of prostitution of another person shall be liable to imprisonment of either description for any term not exceeding two years."

If a case is covered by section 6 (3), a presumption arises against the accused. Section 6 (3) provides as follows: —

"6(3). Where a male person is proved to live with or to be habitually in the company of a prostitute, or where any person is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, he shall, in the absence of proof to the contrary, be deemed to be knowingly living on the earnings of prostitution."

The word "habitually" denotes a tendency to act in a certain way. The evidence reveals that on all the occasions that the girl offered her body to others for the express purpose of prostitution the accused was always found together with or near her in proximity of time and place. He knew she was a prostitute. The girl says it was he who turned her into that ugly trade. In the circumstances and on the evidence a presumption under section 6 (3) of the Ordinance arose against him and Mr. Devadas, who argued this appeal with candour and ability, very rightly conceded that this presumption had arisen against his client. It was therefore for him "to prove the contrary." Reliance was placed upon the case of *Rex* v. *Lee Whoy Kwoi*.[1] Horne J. in that case said:

"If, therefore, a certain class of evidence is accepted as proof of the fact (a) that the woman is a prostitute, and (b) that the accused lived with her; then no higher quality of evidence should be required from the accused in rebuttal of the presumption which has so arisen against him. It is conceded by the prosecution in this case that there is no other evidence of the fact of prostitution during the period of the charge than that of the woman herself. Such evidence may be accepted without any corroboration, but it is always in the discretion of a court to require corroboration (section 115 Evidence Ordinance); and in my view a judge or magistrate sitting alone, without jury or assessors, is placed in a very difficult position, when called upon to say whether he should accept evidence from *tainted or dangerous sources* in the absence of corroboration.

The presumption having been held by the District Judge to arise it is necessary to consider what evidence there was of proof to the contrary. If, as I have indicated, the presumption is held to arise on the sole testimony of the woman, that is if it arises on a weak case, then it is not to be demanded of an accused person that the proof to the contrary should be overwhelmingly strong."

The learned judge then went on to say:

"The sub-section 3 only raises a disputable presumption and if there is evidence disputing it, it cannot be said that it has become a conclusive presumption. Once there is evidence disputing the presumption, the prosecution is thrown back to its original duty of proving the case."

In *Lee Whoy Kwoi's* case[1] a prostitute began to live as the mistress of the accused who not only supported her but also tried to prevent her from leaving the house for purposes of prostitution. The accused in this case, however, says that although he wanted to keep the girl as his mistress he could not afford to do it and that he could not give her any money either to enable her to get out of and away from prostitution. Further this case does not depend on the bare words of the girl alone. There is ample corroborative evidence to support the conviction. The onus on the accused was undoubtedly no more than to "prove the contrary" merely by a preponderance of probability of the truth of what he deposed. The learned magistrate found that the accused had failed to rebut the presumption under section 6(3) of the Ordinance and I cannot find any fault with that finding of the learned magistrate. I might say that there was sufficient evidence in this case to convict the accused even without that presumption. The learned magistrate found the testimony of the girl "frank and truthful" and he found as a fact that the accused received from her part of the earnings that she got from prostitution. I find no justification to interfere with that finding. In the case of *Tom James Pickford*[2] Lord Reading delivering the judgment of the Court of Criminal Appeal said: —

"The court is of opinion that there was ample evidence on which the jury could arrive at their verdict, and we see no ground for quashing the conviction as regards the weight of evidence. As to corroboration it has never been laid down that it is necessary to have corroboration in a case of this kind; it is not essential. There may be cases where it is plain that the woman was an accomplice, and where what has been called "a rule of prudence and discretion" should be followed and the jury warned by the judge. But there are other cases where it is by no means clear that the woman was an accomplice; she may have acted under compulsion."

Again in the case of *Archibald King*[3] Lord Reading observed: —

"Then it is said that the court should lay down the rule that there must be corroboration and that the jury must be so cautioned. The court thinks it is impossible to lay down such a rule, there is nothing in the statutes or in the common law to justify it. The only way in which it was possible to argue the point was on the analogy of other offences which are statutory, where by the statute creating the offence corroboration is required. It would be most dangerous for the court to lay down such a rule; we are here to administer the law, not to make it. On the other hand, the judge is justified in warning the jury against accepting the evidence of a girl who is leading such a life against a man without corroboration. That is a matter for the discretion of the judge."

The learned magistrate although he was not obliged to do so yet duly cautioned himself against convicting the accused on the uncorroborated evidence of the girl. He was right in so cautioning himself. There was sufficient evidence besides the evidence of the girl which corroborated her and he has duly dealt with that in his grounds of decision.

The words in section 6 (1) of the Women and Girls Protection Ordinance are living "on the earnings of prostitution" and not living "on the earnings of a prostitute." No argument based on any supposed distinction between these two expressions is capable of being raised in this case. Lord Goddard in the case of *Calvert* v. *Mayes*[4] said: —

"In the circumstances it seems to me clear that this man was trading in prostitution. He was living on the earnings of prostitutes because they were earning money which otherwise he would never have been paid. I do not think that it matters whether he received it from the hand of the American serviceman or whether the American serviceman handed it to the girl and the girl handed it to him: in any case she was earning the money by prostituting herself."

(Also see *Regina* v. *Thomas*.[5])

The words "lives on" in section 6(1) of the Women and Girls Protection Ordinance mean that the earnings of prostitution constitute one of the sources of subsistence or livelihood of the accused. In *Shaw* v. *Director of Public Prosecutions*[6] Lord Reid held that the words "living on" used in section 30 of the Sexual Offences Act 1956 connoted living parasitically. Section 30(1) of the Sexual Offences Act 1956 is in its material parts the same as section 6(1) of our Women and Girls Protection Ordinance. Lord Reid said: —

"What was the mischief which Parliament must have had in mind? .... The mischief is plain enough. It is well known that there were and are men who live parasitically on prostitutes and their earnings. They may be welcome and merely cohabit, or they bully women into earning money in this way. They prey or batten on the women. Such men are clearly living on the earnings of prostitution: if they have or earn some other income then they are living in part on such earnings....

To my mind, the most obvious case is where he takes advantage of her difficulty in getting accommodation to extract from her in the guise of rent sums beyond any normal commercial rent. In reality he is not then merely acting as landlord; he is making her engage in a joint adventure with him which will bring to him a part of her immoral earnings over and above rent. And there may well be other ways in which he can make himself a participator in her earnings and not merely a recipient of rent."

The accused in this case, to my mind, was a participator in the earnings of the girl. If a man knowingly assists a prostitute with the direct object of enabling her to carry on her trade and knowingly lives wholly or in part on the earnings of the prostitution which he assists, he is guilty of an offence under section 6(1) of the Women and Girls Protection Ordinance The submission that there is no evidence from any of the prosecution witnesses (except the girl) that they paid any money or money's worth to the accused for the sexual intercourse they had with the girl involves much too narrow a view of the facts. During the course of the arguments counsel for the appellant laid great emphasis on what he described as the fact "that except on November 19, 1969 when some money was found on the person of the accused there was no other corroboration in the case." It seems to have been forgotten that the charge related to the offence committed on November 19, 1969. A similar argument seems to have been presented to the court in the case of *The King* v. *Hill*.[7] Bankes J. delivering the judgment of the court said: —

"A further objection was taken in the case of Hill. He was indicted for having lived on the earnings of prostitution upon one specified day only, and it was contended that the indictment was therefore bad. It was also contended that evidence was not admissible upon the indictment, as laid, of anything done on any day except the day specified. We do not agree with either contention. The indictment charging the offence in that way is perfectly good, and there is no ground for saying that evidence is not admissible to show what the appellant's relations with the woman in question had been either before or after the day specified in the indictment, as such evidence is clearly relevant to the question whether he was or was not, on the day specified, living on the earnings of her prostitution."

The evidence of the conduct and activities of the accused prior to November 19, 1969 was primarily introduced by the prosecution to raise the presumption under section 6(3) and to evidence his conduct relevant to the charge.

I was asked to discard and not to look at the evidence of Han (P.W. 4) because it was self-evident that he was an accomplice. That he was an accomplice there can be no doubt about but I can find no authority that the entire evidence of an accomplice should be *rejected* merely because he is an accomplice. The only suggestion put to him in cross-examination was that he was "working hand-in-glove with the accused in this matter." He could not possibly afford to agree with that. One finds the evidence of Han sufficiently corroborated by the girl.

It was urged that it was very unlikely that the accused would, in the circumstances he found himself in at the Westernhay Hotel on the evening of November 19, 1969, have allowed the girl to hand over the $25 to him. One should, however, remember that the accused at that time did not know and had no reason to suspect that the raid was as a result of the report made by the girl to the police. It was natural for him to be anxious that the girl did not get involved. If she did not get involved, he could not get involved. The girl says that it was he who asked her to give him the $25. The girl delivered the $25 and this having been done he wished to go to the toilet and showed signs of restlessness. He was searched before he was allowed to go to the toilet and the money was found on him. One has to ask oneself — why this sudden desire to go to the toilet? Was it to destroy the evidence? What else could it be? He says the money was his own and the girl had never given it to him. Could this be true? P.W. 5 paid the girl. Even if it be assumed that P.W. 5 paid the girl in two $10 and one $5 notes can it be said that no part of the $25 which travelled from the pocket of P.W. 5 to the purse of the girl travelled again to the pocket of the accused? The girl noted down the numbers of the currency notes in the short interval between the time that P.W 7 left the room and P.W. 6 came in. P.W. 3 only "looked into the hand bag" of the girl. In any case he did not see any cash in her hand bag. In the circumstances and for the reasons given by the learned magistrate, P.W. 5 can but only have been mistaken about the denomination of the currency notes. The denomination of the currency notes does not alter the essential facts. Even if part of the money which P.W. 5 gave to the girl is ultimately and not long after such giving found on the accused, it does establish that money passed from P.W. 5 to the girl and on to the accused.

At the very outset of the hearing of this appeal I asked Mr. Devadas to satisfy me on two points, namely: —

(a) What interest did the appellant have in the girl that he was prepared to spend his money and time on her?

(b) If the girl was in fact a prostitute and carried on her trade as such prostitute unaided by the appellant, why had she to ply her trade in his company and always lean on him?

The reply to the second question was that except on one occasion when the girl went on her own, the

accused was with her on all the remaining occasions and that except on one occasion she herself regulated her charges. The reply to the first question was that the accused was fond of having sexual intercourse with her and had not to pay for it and that was why he was following her and spending his time and money on her. This is taking one to be too credulous and to ask one to think that the moon is made of green cheese.

The appeal is dismissed.

Appeal dismissed.

INNOCENT v. PUBLIC PROSECUTOR

[O.Cr.J. (Mohamed Azmi J.) February 25, 1971]

[Kuala Lumpur — Criminal Application No. 3 of 1971]

Criminal Law and Procedure — Appeal — Petition of — Application for extension of time to file — Discretion of court to grant application — Criminal Procedure Code (Cap. 6), ss. 307(iii) and 310.

The appellant applied for extension of time to file the petition of appeal. It appeared that the copy of the grounds of decision was not served on the appellant who was serving sentence in Pudu Prison, but was sent to his wife. The appellant was therefore unable to file the petition within ten days of receipt of the copy of the grounds of decisions.

Held: in the circumstances of this case and in order that substantial justice may be done, the application to file the petition of appeal out of time should be granted.

Case referred to:-

(1) *Veerasingam* v. *Public Prosecutor* [1958] M.L.J. 76.

MOTION.

M. Edgar for the appellant.

Mohamed Adan bin Dato Shaib (Deputy Public Prosecutor) for the respondent.

Mohamed Azmi J.: This is an application by notice of motion for extension of time for filing petition of appeal.

The appellant was charged under section 420 of the Penal Code on three counts *vide* Kuala Lumpur sessions court arrest case No: 36 of 1969. On January 14, 1971, he was convicted by the president, sessions court, and sentenced to nine months imprisonment on each of the three charges. On the same day, he personally filed a notice of appeal against conviction and sentence giving his address at No: BB 10, Ipoh Road Gardens, 4th Mile Ipoh Road, Kuala Lumpur, and by letter dated February 8, 1971, the appellant wrote from Pudu Prison to the registrar of sessions court to furnish him with notes of evidence of the proceedings. As required by section 307(iv) of the Criminal Procedure Code (F.M.S. Cap. 6), within ten days after the copy of the grounds of decision has been served on the appellant, the appellant shall lodge with the trial court a petition of appeal in triplicate addressed to the court of a judge. In the present case, the grounds of decision were served on the wife of the appellant at No: B-28, 4¼ Mile, Ipoh Road, and by letter dated February 5, 1971 she returned the documents to the registrar, sessions court, intimating that the grounds of decision should be forwarded to the appellant at Pudu Prison. I fail to understand why the grounds of decision were served on the appellant's wife. If only the court officials concerned had taken the trouble to peruse the records of the proceedings, they would have known that the appellant was not on bail and was serving his imprisonment terms at Pudu Prison at all material times. Be that as it may, I also find that the provisions of section 307(iii) of the Criminal Procedure Code have not been complied with. The grounds of decision ought to have been left at the address mentioned in the notice of appeal or, alternatively, they should have been sent by registered post to the appellant at the said address.

Section 310 of the Criminal Procedure Code, which is relevant in this application, reads as follows: —

"A Judge may, on the application of any person desirous of appealing who may be debarred from so doing upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the Magistrate and to the parties as such Judge shall consider desirable in order that substantial justice may be done in the matter."

In my view, that section clearly gives a judge the discretion to extend the period in which the appellant is to file his petition of appeal. As stated by Thomson C.J. (as he then was) in the case of *Veerasingam* v. *Public Prosecutor*[1] at page 79:

"The only fetter which section 310 places upon the exercise of the discretion which it gives to the judges is that it shall be exercised 'in order that substantial justice may be done.' Clearly, to exercise his discretion properly the judge must apply his mind to all the relevant material ....".

Having regard to all the relevant materials in this case, I find that in order that substantial justice may be done, the application to file petition of appeal out of time should be granted. I would, therefore, order that the petition of appeal be filed within ten days from receipt of the notes of evidence by the appellant or his solicitor, and that bail of $5,000 in one surety pending appeal be granted.

Motion granted.

Solicitors: *Morris Edgar & Co.*